

1 RENE L. VALLADARES
2 Federal Public Defender
3 Nevada State Bar No. 11479
4 Amy B. Cleary
5 Assistant Federal Public Defender
6 Benjamin F. J. Nemec
7 Attorney at Law
8 Nevada State Bar No. 14591
9 411 E. Bonneville, Ste. 250
10 Las Vegas, Nevada 89101
11 (702) 388-6577
12 Amy_Cleary@fd.org
13 Ben_Nemec@fd.org
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15 Counsel for Gerald Leslie Tate

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

13 United States of America,
14 Respondent/Plaintiff,
15 v.
16 Gerald Leslie Tate,
17 Petitioner/Defendant.

Case No. 2:14-cr-00384-APG-CWH
Case No. 2:19-cv-02175-APG

**Petitioner/Defendant Gerald
Tate's Unopposed Motion to Stay
and Hold in Abeyance His Pro Se
Second Motion to Vacate under
28 U.S.C. § 2255 for 90 Days**

ORDER

19 **Certification:** This Motion is timely filed, as no time limitation applies.

20 Petitioner/Defendant Gerald Leslie Tate moves this Court to stay and hold
21 in abeyance his pro se Second Motion to Vacate under 28 U.S.C. § 2255 for 90
22 days to allow the Office of the Federal Public Defender to review his case and, if
23 it deems appropriate to do so, move to amend his Second Motion to Vacate before
24 the government is required to file its Response thereto.

25 On June 21, 2019, the United States Supreme Court held in *Rehaif v.*
26 *United States*, 139 S. Ct. 2191 (2019), that a defendant charged with unlawful

1 possession of a firearm under 18 U.S.C. §§ 922(g)(1) and 924(a)(2) must know of
2 his prohibitive firearm status at the time of the alleged firearm possession.
3 Following this decision, on September 27, 2019, Chief Judge Miranda M. Du
4 issued General Order 2019-06 presumptively appointing the Office of the Federal
5 Public Defender (FPD) “to represent any defendant previously determined to
6 have been entitled to appointment of counsel, or who is now entitled to
7 appointment of counsel, to determine whether that defendant may qualify for
8 relief under 28 U.S.C. § 2255 or 28 U.S.C. § 2241 in light of *Rehaif*” If so,
9 the FPD is appointed “present any petitions, motions or applications relating
10 thereto to the Court for adjudication that the FPD deems appropriate under”
11 *Rehaif*. See General Order 2019-06, p. 1.

12 The FPD is thus presumptively appointed under General Order 2019-06 to
13 review Mr. Tate’s case to determine his eligibility for relief under *Rehaif* as he
14 has a conviction under §§ 922(g)(1) and 924(a)(2). ECF No. 26. However, Mr.
15 Tate filed a pro se Second Motion to Vacate under 28 U.S.C. § 2255 asserting a
16 claim for relief under *Rehaif* on December 16, 2019. ECF No. 61. The Court has
17 ordered the government to file a Response to Mr. Tate’s Second Motion to Vacate
18 by January 6, 2020. ECF No. 62.

19 Due to undersigned counsel only recently becoming aware that Mr. Tate is
20 potentially eligible for relief under *Rehaif* and having now received permission
21 from Mr. Tate to review his case for the purpose of potentially serving as his
22 counsel in this habeas litigation, counsel requests this Court stay and hold in
23 abeyance Mr. Tate’s Second Motion to Vacate to allow counsel 90 days to review
24 his case. During that time, undersigned counsel will review Mr. Tate’s case to
25 determine whether, pursuant to General Order 2019-06, it is appropriate for
26 undersigned counsel to file a First Motion to Amend Mr. Tate’s Second Motion to

1 Vacate along with a proposed First Amended Second Motion to Vacate and/or file
2 the appropriate motion in the Ninth Circuit Court of Appeals for permission to
3 pursue the instant habeas litigation.

4 Undersigned counsel contacted counsel for the government, Appellate
5 Chief Elizabeth O. White, regarding this Mr. Tate's request that the Court stay
6 Mr. Tate's habeas proceedings for 90 days as set forth herein on December 20,
7 2019. Ms. White states she has no opposition to this request.

8 Mr. Tate thus requests the Court vacate the government's Response due
9 date and issue an Order staying this matter and holding it in abeyance for 90
10 days, or until the FPD files documents with the Court on Mr. Tate's behalf
11 necessitating that the stay be lifted, whichever occurs sooner.

12 Dated: December 20, 2019.

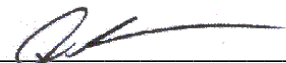
13 Respectfully submitted,

14 RENE L. VALLADARES
15 Federal Public Defender

16 By: /s/ Amy B. Cleary

17 Amy B. Cleary
18 Assistant Federal Public Defender

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20 **IT IS SO ORDERED.**
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24 UNITED STATES DISTRICT JUDGE
25 December 20, 2019.
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